92-1881

Supreme Court, U.S.
FILED
MAY 24 1993
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No. _____

IN THE SUPREME COURT

OF THE UNITED STATES

OCTOBER TERM, 1992

NADINE THOMSEN,

Petitioner,

v.

STATE OF OREGON, EX REL JUVENILE DEPARTMENT OF WASHINGTON COUNTY AND CHILDREN'S SERVICES DIVISION

Respondents.

Petition For a Writ of Certiorari
to the Court of Appeals of the
State of Oregon

GREGORY L. GUDGER
Counsel of Record
1500 N.E. Irving St
Suite 540
Portland, OR 97232
(503) 231-7765

May 24, 1993

54 pp

QUESTIONS PRESENTED

1. DOES THE APPLICATION OF OREGON REVISED STATUTE CHAPTER 419.523(3)(e) BY THE STATE OF OREGON CONSTITUTE AN IMPERMISSIBLE DEPRIVATION OF PETITIONER'S PROTECTED LIBERTY INTEREST THROUGH A DENIAL OF DUE PROCESS RIGHTS UNDER THE FOURTEENTH AMENDMENT OF THE CONSTITUTION OF THE UNITED STATES OF AMERICA WHERE PETITIONER WAS NOT ALLOWED TO DEMONSTRATE SUFFICIENT COGNITIVE CONTROL AND PARENTAL RESPONSIBILITY UNDER RECOMMENDED PRESCRIPTION MEDICATION PRIOR TO STATE TERMINATION OF PETITIONER'S PARENTAL RIGHTS?

2. DOES THE FAILURE OF THE STATE OF OREGON TO ALLOW PETITIONER TO DEMONSTRATE SUFFICIENT COGNITIVE CONTROL AND PARENTAL RESPONSIBILITY THROUGH THE USE OF RECOMMENDED PRESCRIPTION MEDICATION PRIOR TO TERMINATION OF PETITIONER'S PARENTAL RIGHTS CONSTITUTE FAILURE TO MEET THE CLEAR AND CONVINCING STANDARD OF PROOF, RESULTING IN A DENIAL OF PETITIONER'S DUE PROCESS RIGHTS UNDER THE FOURTEENTH AMENDMENT OF THE CONSTITUTION OF THE UNITED STATES OF AMERICA?

PARTIES TO THE PROCEEDINGS BELOW

The Petitioner in the circuit court case, and the Appellant in the Court of Appeals of the State of Oregon were:

State of Oregon, ex rel Washington County Juvenile Services Department and State of Oregon Department of Human Resources, Children's Services Division.

The Respondent in the circuit court case, and Appellant in the Court of Appeals of the State of Oregon was:

Nadine Thomsen

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IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1992

NADINE THOMSEN, Petitioner,

v.

STATE OF OREGON, EX REL JUVENILE DEPARTMENT OF
WASHINGTON COUNTY, AND CHILDREN'S SERVICE DIVISION, Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS
OF THE STATE OF OREGON

The Petitioner, Nadine Thomsen, respectfully request that a Writ of Certiorari issue to review the judgment and opinion of the Court of Appeals of the State of Oregon, entered in the above-entitled proceeding on November 4, 1992.

OPINIONS BELOW

The opinion of the Court of Appeals of the State of Oregon is reprinted in Appendix A hereto.

The order denying reconsideration by the Court of Appeals is reprinted in Appendix A hereto.

The order of the Supreme Court of the State of Oregon denying review is reprinted in Appendix A hereto.

The order of the Supreme Court denying reconsideration is reprinted in Appendix A hereto.

The judgment terminating parental rights and order of permanent commitment is reprinted in Appendix A hereto.

JURISDICTIONAL STATEMENT

1. COMPETENT SUBJECT MATTER JURISDICTION IS PREMISED, IN WHOLE AND\OR PART UPON THE FOLLOWING FEDERAL CONSTITUTIONAL PROVISIONS AND FEDERAL STATUTES:

   A. XIV AMENDMENT OF THE CONSTITUTION OF THE UNITED STATES OF AMERICA.

   B. TITLE 28, SECTION 1257, SUBSECTION a UNITED STATES CODE.

   C. RULE 10.1(b) RULES OF THE UNITED STATES SUPREME COURT

CONSTITUTIONAL, STATUTORY AND REGULATORY PROVISIONS INVOLVED:

(1) ORS 419.476.

(2) ORS 419.523(1).

(3) ORS 419.523(3)(a).

(4) ORS 419.523(3)(d).

(5) ORS 419.525.

STATEMENT OF THE CASE

Nadine Thomsen, a single mother as a result of a rape in 1987, has been diagnosed as having a borderline personality disorder. Since the birth of her daughter, Valerie, an August 7, 1988, Ms. Thomsen has voluntarily placed her daughter in the care of the State of Oregon Children's Services Division ("CSD") four times. Then voluntary placements occurred during the following periods: October 14 through November 18, 1988; November 2 through December 2, 1989; May 4 through December 21, 1990, and August 21, 1991 to the present.

Three of the four voluntary placements by Ms. Thomsen resulted from a recognition that her mental state precluded her from

adequately performing her parental responsibilities. The fourth voluntary placement resulted, in part, from a psychological condition brought about by the second reported rape of Ms. Thomsen on or about August 19, 1991.

During each placement of the child into foster care by CSD, Ms. Thomsen received services from CSD- group and individual counseling and therapy; shelter care during periods of residential instability, and homemaker services when Ms. Thomsen had secured housing. Commencing in February of 1990, Ms. Thomsen was referred to Tualitin Valley Mental Health for psychological counseling for what appeared to CSD to be severe depression.

As a condition precedent to placing the child on May 4, 1990, Ms. Thomsen subjected

herself to a psychological evaluation at the behest of CSD because Ms. Thomsen appeared depressed and confused, but willing to resume mental health counseling. Indeed, she had been diagnosed by Tualitin Valley Mental Health as suffering from dystonia, a depression disorder; mixed personality disorder and mixed character disorder.

Based upon the evaluation of a Dr. Brounstein, which took place between June 11 and June 14, 1990, Ms. Thomsen was diagnosed as having a borderline personality disorder, with little change of being able to properly parent her child.

Following Dr. Brounstein's report, CSD filed a petition for jurisdiction with Washington County Juvenile Court in August, 1990.

Earlier that same August, Ms. Thomsen began counseling at Metropolitan Family

Services to improve her parenting skills and her ability to cope with parenting responsibilities in spite of the diagnosed borderline personality disorder. Dr. Karnick of Metropolitan reported in December, 1990 that Ms. Thomsen was making clearly discernible progress. Ms. Thomsen also demonstrated progress in the stress management portion of her parenting classes.

In October, 1990, Ms. Thomsen voluntarily submitted to a second psychological evaluation by a Dr. Sabin. Dr. Sabin recommended placement of Valerie Thomsen with her mother, continuation of CSD services, and a prescription for an anti-depressant in addition to psychotherapy for Ms. Thomsen. With these supports in place, Dr. Sabin believed Ms. Thomsen's

ability to function as a parent could be adequately evaluated. Ms. Thomsen was never provided with a prescription of anti-depressants pursuant to Dr. Sabin's evaluation and assessment.

In fact, Drs. Sabin and Karnick referred Ms. Thomsen to a Dr. Fredrickson to have an anti-depressant prescribed, but Dr. Fredrickson did not do so. Without reviewing Dr. Sabin's report, Dr. Fredrickson met with Ms. Thomsen for one hour, cursorily diagnosed her depression as organic and, or commonly following the birth of a child, then sent her away. Dr. Fredrickson had even failed to diagnose the previously diagnosed personality disorder.

On December 21, 1990, Valerie Thomsen was again returned to her mother, but was

removed only six weeks later in February, 1991. Reunification, without medication, had proven unsuccessful. The final, subsequent reunification of parent and child sans a prescribed anti-depressant, from July 20, 1990 to August 19, 1991 was similarly unsuccessful, complicated by a rape and assault of Ms. Thomsen.

The decision to terminate Ms. Thomsen's parental rights was made on September 26, 1991. On April 1, 1992, the Circuit Court of the State of Oregon for the County of Washington, the Honorable Michael J. McElligott presiding, terminated the parental relationship between Nadine and Valerie Thomsen. (App. A). No exceptions were taken by court-appointed trial counsel. All federal questions and assignments of

error were raised on appeal by appellate counsel. The Oregon Court of Appeals affirmed the trial court's ruling without opinion on November 4, 1992, and denied appellant Thomsen's Petition for Reconsideration on December 30, 1992. (App. A). The Oregon Supreme Court denied review of the matter on January 26, 1993, and denied appellant/petitioners' Petition for Reconsideration on February 23, 1993. (App. A).

The jurisdiction of this Court to review the judgment of the Court of Appeals of the State of Oregon is invoked under 28 U.S.C. §1257.

REASONS FOR GRANTING THE WRIT

This case presents a classic, improper and unwarranted termination, by the State, of a mother's fundamental liberty interest in the care, custody and management of her child, an interest articulated by this Court in **Santosky v. Kramer, 455 U.S. 745 (1982).** The decision here conflicts with court decisions in other jurisdictions.

I. Denial of Due Process

The Due Process Clause of the Fourteenth Amendment also requires that the standard of proof be one of clear and convincing. **State ex rel Juvenile Department v. Habas, 299 Or. 177, 180, fn. 1 (1985).** Indeed, absent the opportunity to determine Ms. Thomsen;s fitness to parent, with assistance of medication and given the

State could not have proven, by clear and convincing evidence, that Ms. Thomsen was "... incapable of providing proper care for the child for extended periods of time." ORS 419.523(3)(a). Given the admission of State witnesses regarding the failure to provide Ms. Thomsen with the kind of support she is both obligated and entitled to receive under the State statute, the requisite standard of proof could not be met.

The State of Oregon establishes original and exclusive jurisdiction of parental failure to provide for minor children in its Juvenile Courts. ORS 419.476 et. seq. So vital an interest is protected by the United States Constitution, and the termination thereof requires procedural fairness. **Lassiter v. Department of Social**

Services, 452 U.S. 18 (1981). Oregon Revised Statutes Chapter 419, Section 523 et. seq., provides for termination and sets forth the grounds. ORS 419.523(3)(a), most pertinent for purposes of this petition, provides for termination due to a parent's inability to provide proper care for extended periods of time due to emotional illness, metal illness or mental deficiency. (App. d). ORS 419.525 sets forth procedural requirements for such termination. (App. D).

Ms. Thomsen's qualification under ORS 419.523(3)(a) as possessing a mental deficiency is not at issue. The State's failure to accord Ms. Thomsen such opportunity to protect her interest under ORS 419.523(3)(e) is, however, squarely on the line.

The State is expressly obligated to make "... reasonable efforts by available social agencies for such extended duration of time that it appears reasonable that no lasting adjustment [by the parent] can be effected." ORS 419.523(3)(e).

In the instant matter, the Children's Services Division failed to provide a prescription for anti-depressants for Ms. Thomsen despite multiple recommendations for such prescription to evaluate her ability to perform appropriate parental functions given her psychological and emotional diagnoses by several doctors. As a result, the State failed to accord Mr. Thomsen reasonably appropriate services prior to taking her child away.

At trial, even Dr. Fredrickson, who misdiagnosed Ms. Thomsen and failed to prescribe the recommended medication, admitted that anti-depressants have an 80% success rate in cases with diagnosis similar to that of Ms. Thomsen, as diagnosed by Drs. Sabin and Karnick. (Tr. 199, at App. B). Dr. Sabin testified that Ms. Thomsen had not gotten all of the help the State was obligated to provide to preserve the familial relationship between Ms. Thomsen and her daughter (Tr. 127, at App. B).

The adequacy of the procedure for termination of parental rights by a State calls for a balancing of the interests articulated by this Court in **Mathews v. Eldridge, 424 U.S. 319, 335 (1976); Santosky v. Kramer, supra, at 747-748.**

Parental terminations are subject to the strictest review. **Santosky v. Kramer, supra; see also McCrery v. Aner, et al.,, 738 F. Supp. 930, 932 (E.D. Pa. 1990).**

This Court has balanced the **Eldridge** factors by the parental termination cases thusly:

> "... the parents interest is an extremely important one...; the State shares with the parent an interest in a correct decision, has a relatively weak pecuniary interest, and, in some but not all cases, has a possibly stronger interest in informal procedures; and the complexity of the proceeding ... could be, but not always be, great enough to make the risk of an erroneous deprivation of the parent's rights unsupportably high." **Lassiter v. Department of Social Services, 452 U.S. at 31.**

Here, the State failed to accord the appropriate, substantive weight to the private interest at stake as compared to the

interest of the state, as evidenced by the state's failure to provide Ms. Thomsen with a clearly reasonable opportunity to demonstrate parental fitness prior to sentencing her to familial capital punishment.

This Court has also said that "... a statute ... may be held constitutionally invalid as applied when it operates to deprive an individual of a protected right although its general validity as a measure enacted in the legitimate exercise of state power is beyond question." **Boddie v. Connecticut, 401 U.S. 371, 379 (1971).**

As applied in the instant matter, ORS 419.523(3)(a) violates the Fourteenth Amendment in that Ms. Thomsen was not provided the procedural fairness and strict

scrutiny the fundamental nature of her interest demanded.

II. Failure of the State's Burden

The denial of the opportunity to demonstrate fitness to protect a fundamental interest also violates the Fourteenth Amendment, as this Court has demonstrated such a denial as violative of Due Process in another jurisdiction. In **Little v. Streater, 452 U.S. 1 (1981)**, this Court held that the State of Connecticut's denial of a blood test to the indigent petitioner violated his right to due process in an action to determine paternity for purposes of imposing a child support obligation. Here, the State of Oregon denied Ms. Thomsen the opportunity to be reasonably tested for her fitness as a parent prior to being deprived of her

constitutionally protected fundamental liberty interest. The State of Oregon has taken from Ms. Thomsen a most precious interest, and only this Court can preserve it.

CONCLUSION

The Petition for Writ of Certiorari should be granted.

Respectfully Submitted,

Gregory L. Gudger
Counsel of Record
May 24, 1993.

APPENDIX A

IN THE SUPREME COURT OF THE STATE OF OREGON

SER/JUVENILE DEPT OF WASHINGTON CO Respondent/Respondent SER/CHILDREN'S SERVICES DIVISION Respondent/Respondent SER/VALERIE LYNN THOMSEN Minor v. NADINE THOMSEN Appellant/Petitioner	)))))))))ORDER)))CA A74508)SCS39846))

The Court has considered the petition for reconsideration and orders that it be denied.

DATE: February 23, 1993.

/s/ WALLACE P. CARSON, JR.
WALLACE P. CARSON, JR.
CHIEF JUSTICE

COPIES TO:
MEG E. KIERAN, Attorney for Respondent
DOUGLAS F. SPENCER, Attorney for Minor
LIZA JANE LANGFORD, Attorney for Appellant

IN THE SUPREME COURT OF THE STATE OF OREGON

SER/JUVENILE DEPT OF WASHINGTON CO Respondent/Respondent SER/CHILDREN'S SERVICES DIVISION Respondent/Respondent SER/VALERIE LYNN THOMSEN Minor v. NADINE THOMSEN Appellant/Petitioner	)))))))))ORDER)))CAA74508)SCS39846))

The Court has considered the petition for review and orders that it be denied.

DATE: January 26, 1993.

/s/ WALLACE P. CARSON, JR.
WALLACE P. CARSON, JR.
CHIEF JUSTICE

COPIES TO:

MEG E. KIERAN, Attorney for Respondent
DOUGLAS F. SPENCER, Attorney for Minor
LIZA JANE LANGFORD, Attorney for Appellant

FILED: November 4, 1992

IN THE COURT OF APPEALS FOR THE STATE OF OREGON

In the Matter of Thomsen, Valerie Lynn, a Minor Child.	)
	)Washington
STATE ex rel JUVENILE DEPARTMENT OF WASHINGTON COUNTY and CHILDREN'S SERVICES DIVISION,	)County)Circuit)Court No.)J90-0259
Respondents,	)
	)CA A74508
v.	)
	)
NADINE THOMSEN,	)
	)
Appellant.	)

Date argued or submitted on briefs: October 19, 1992

Before: Warren, Presiding Judge, and Riggs and Edmonds, Judges

Attorney for Appellant: Liza Jane Langford

Attorney for Respondents: Meg E. Kieran

AFFIRMED WITHOUT OPINION

DESIGNATION OF PREVAILING PARTY AND AWARD OF COSTS

Prevailing party: Respondents

[ ] No costs allowed.
[ ] Costs allowed, payable by:

In a case in which a party could be represented by appointed counsel entitled to compensation under ORS 138.500, but the prevailing party is represented by retained counsel or appeared pro se, the prevailing party is allowed costs.

IN THE COURT OF APPEALS FOR THE STATE OF OREGON

In the Matter of Thomsen, Valerie Lynn, a Minor Child.	)Washington)County.)Circuit
STATE ex rel JUVENILE DEPARTMENT OF WASHINGTON COUNTY and SERVICES DIVISION	)JO 920259)CHILDREN'S)TERMINATION)PARENTAL)RIGHTS
Respondents,	)
v.	) CA A 74508) SC S39846
NADINE THOMSEN,	)
Appellant.	) **ORDER**

The Court of Appeals has considered the Petition for Review filed in this case as a Petition for Reconsideration and has on December 30, 1992, denied the petition. ORAP 9.15.

The Supreme Court may now proceed to determine whether to grant review. The appellate court decision is not enforceable until the Supreme Court has completed its review of the petition. ORAP 14.05.

s/GEORGE M. JOSEPH
CHIEF JUDGE

c: Meg E. Kieran: Attorney for Respondents
Douglas F. Spencer: Attorney for Minor
Liza Jane Langford: Attorney for Appellant

IN THE CIRCUIT COURT OF THE STATE OF OREGON

FOR THE COUNTY OF WASHINGTON

Juvenile Department

In the Matter of	)	Case No. J90-0259
	)	
VALERIE LYNN THOMSEN	)	JUDGMENT TERMINATING
	)	PARENTAL
	)	RIGHTS AND ORDER OF
	)	PERMANENT
A Child.	)	COMMITMENT

This matter came on for hearing before the Honorable Michael McElligott, Circuit Court Judge, on March 3-6, 1992, on the Petition for the Termination of Parental Rights of Nadine Thomsen, mother of the above-named child. Petitioner, Children's Services Division appeared through Chris Pilotti, caseworker, and Jean Fogarty, Assistant Attorney General; Nadine Thomsen appeared personally and through her counsel, Tom Collins; and Susan Bishop, Court

-Appointed Special Advocate, appeared personally. The court heard evidence and argument of counsel, received exhibits and reviewed the court's legal file in this matter and being advised;

The court FINDS by clear and convincing evidence that:

1. Mother has a strong attachment to her daughter. She loves her [and] is award of her needs. Mother places her daughter with others and with Children's Services Division when she is not doing well.

2. The intensity of mother's love for her daughter is part of the present problem. She places alot of pressure on herself to be a good parent but then falls apart due to the stress. This is a terrible irony.

3. Children' Services Division (CSD) has done a marvelous job in this case. The child is in tact because of the work CSD has done.

4. It is abundantly clear, by more than clear and convincing evidence, that mother has failed to obtain and maintain a suitable or stable living situation for the child so that return of the child to her is possible. However, this is not due to a lack of effort on mother's part.

5. Mother has failed to present a viable plan for the return of the child to her care and custody.

6. Mother has failed to learn or assume parenting and housekeeping skills sufficient to provide for the safe and proper raising of the child, despite the aid

and instruction of a homemaker provided by Children's Services Division. Mother is capable of learning and assuming these parenting skills but stress causes her to fall apart. Regardless of how hard she tries, she cannot do it.

7. Mother has an emotional illness or mental illness of such a nature and duration as to render her incapable of providing proper care for the child for extended periods of time. Mother has some personality disorder, whatever label is placed upon it, which is the result of the terrible and serious abuse she received as a child herself. This disorder results in a disintegration of her personality so that mother literally falls apart. The axiom that love is not enough to parent a child is very

accurate here.

8. Mother has not emotionally neglected the child but has physically neglected the child when she has become disturbed herself.

9. Mother has failed to effect a lasting adjustment after reasonable services by available social agencies for such extended duration of time that it appears reasonable that no lasting adjustment can be affected. CSD has done a marvelous job for the mother and the child. Mother cannot overcome her own childhood.

10. Although the issue of placement is not before this court, it is clear that due to mother's abusive childhood, that it would be a terrible mistake to place this child with her maternal grandmother.

11. Mother is unfit to parent her daughter by reason of her emotional illness which is seriously detrimental to the child and integration of the child into her home is improbable in the foreseeable future.

NOW, THEREFORE, IT IS HEREBY ORDERED AND ADJUDGED that the parental rights of Nadine Thomsen to Valerie Thomsen, are forever terminated and said child is permanently committed to the Children's Services Division, Department of Human Resources, State of Oregon, with the authority to consent to in loco parentis to the adoption of said child in lieu of the consent of Nadine Thomsen, the child's mother whose parent rights are hereby judicial terminated.

DATED this 1 day of April, 1992.

MICHAEL J. MCELLIGOTT
CIRCUIT COURT JUDGE

Submitted by:

Jean Fogarty, OSB #81490
Assistant Attorney General
of Attorneys for Petitioner

APPENDIX B

In the Matter of Valerie Lynn Thomsen, A Child, In the Circuit Court of the State of Oregon for the County of Washington, Juvenile Department, Case No. C90-0259, Parental Termination Trial.

Trial Court Transcript, Page 200, Lines 11-22:

" Q How about latency of response?

A Latency of response is exhibited by patients in interview and can be a sign of significant depression. Ms. Thomsen did not exhibit latency during my interview with her.

Q So these -- this description that you were talking about of vegetative symptoms of latency of response, problems with sleep patterns, these are all signs that would indicate use of medication?

A It would indicate somewhere in the neighborhood of an eighty percent chance of remission of these

specific symptoms --"

Trial Court Transcript, Page 127, Lines 11-22:

" Q Okay. So, guarded in -- in her -- in Nadine Thomsen's ability to succeed as a parent.

A Yes. I always think the past is the best predictor of the future. And the past in this family from 1988 until late 1990 had not been very positive. There had been a series of times when Ms. Thomsen had felt overwhelmed by this child and I recognize that she had limited emotional resources internally. But I felt that she'd never really received all the maximum external benefits that -- that we were obligated to try to help this child promote that attachment and remain in her mother's home.

So I didn't necessarily expect that this would succeed, but I through that -- that this was the least detrimental alternative for the child.

APPENDIX C

CONSTITUTIONAL PROVISIONS

The Fourteenth Amendment to the United States Constitution provides in relevant part:

> "Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

APPENDIX D

STATUTORY PROVISIONS IN PERTINENT PART

28 USC § 1257. State courts; certiorari

> "(a) Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court by writ of certiorari where the validity of a treaty or statute of t he United States is drawn in question or where the validity of a statute of any State is drawn in question on the ground of its being repugnant to the Constitution, treaties, or laws of the United States, or where any title, right, privilege, or immunity is specially set up or claimed under the Constitution or the treaties or statutes of, or any commission held or authority exercised under, the United States."

ORS 419.476 Children within jurisdiction of juvenile court.

> "(1) The juvenile court has exclusive original jurisdiction in any case involving a person who is under 18 years of age and:
> (a) Who has committed an act which is a violation, or which if done by an adult would constitute a violation, of a law or ordinance of the United States or a state, county or city; or (b) Who is beyond the control of the person's, guardian or other person having custody of the person; or (c) Whose behavior, condition or circumstances are such as to endanger the welfare of the person

or the welfare of others;

or (d) Who is dependent for care and support on a public or private child-caring agency that needs the services of the court in planning for the best interest of the person; or (e) Either the person's parents or any other person having custody of the person have abandoned the person, failed to provide the person with the support or education required by law, subjected the person to cruelty or depravity or to unexplained physical injury or failed to provide the person with the care, guidance and protection necessary for the physical, mental or emotional well-being of the person; or (f) Who has run away from the home of the person; or (g) Who has filed a petition for emancipation pursuant to ORS 109.550 to 109.565, 419.710 and this section.(2) The court shall have jurisdiction under subsection (1) of this section even though the child is receiving adequate care from the person having physical custody of the child.

(3) The provisions of subsection (1) of this section do not prevent a court of competent jurisdiction from entertaining a civil action or suit involving a child.
(4) The court shall have no further jurisdiction as provided in subsection (1) of this section after a minor has been emancipated pursuant to ORS 109.550 to 109.565."

ORS 419.523 Termination of parental rights; grounds.

"(1) The parental rights of the parents of a child within the jurisdiction of the juvenile court as provided in ORS 419.476(1) may be terminated as provided in this section and ORS 419.525, if it is in the best interest of the child. The rights of one parent may be terminated without affecting the rights of the other parent."

* * * * *

"(3) The rights of the parent or parents may be terminated as provided in subsection (1) of this section if the court finds that the parent or parents are unfit by reason of conduct or condition seriously detrimental to the child and integration of the child into the home of the parent or parents is improbable in the foreseeable future due to conduct or conditions not likely to change. In determining such conduct and conditions, the court shall consider but is not limited to the following:

(a) Emotional illness, mental illness or mental deficiency of the parent of such nature and duration as to render the parent incapable of providing proper care for the child for extended periods of time.

* * * * *

(d) Physical neglect of the child.

(e) Lack of effort of the parent to adjust the circumstances of the parent, conduct, or conditions to make the return of the child possible or failure of the parent to effect a lasting adjustment after reasonable efforts by available social agencies for such extended duration of time that it appears reasonable that no lasting adjustment can be effected.

ORS 419.525 Procedure for termination; appointment of counsel for parent.

"(1) An order pursuant to ORS 419.523 may be made only after service of summons, as provided in ORS 419.488 on the parent or parents. The summons shall contain a statement to the effect that the rights of the parent or parents are proposed to be terminated in the proceeding. The summons shall also contain a statement advising the parents that they have the right to an attorney in the matter and that if they cannot afford an attorney one may be appointed at state expense upon their request and a court determination of indigency. The statements may be made in the summons originally issued in the proceeding or in separate summons issued any subsequent stage of the proceeding.

"(2) If the parents are determined to be indigent by the court, and request the assistance of appointed counsel, the court shall appoint an attorney to represent them at state expense. Appointment of counsel under this section is subject to ORS 135.055 and 151.430 to 151.480 and to applicable contracts entered into under ORS 151.460.

"(3) A hearing shall held by the court on the question of terminating the rights of the parent or parents. no such hearing shall be held any earlier than 10 days after service or final publication of the summons. The facts on the basis of which the rights of the parents are terminated, unless admitted, must be established by clear and convincing evidence and a stenographic or other report authorized by ORS 8.340 shall be taken of the hearing.

"(4) Unless there is an appeal from the order terminating the rights of the parent or parents, the order permanently terminates all rights of the parent or parents whose rights are terminated and the parent or parents have no standing to appear as such in any legal proceeding concerning the child."